



4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2013-N-0403]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Protection of Human Subjects: Informed Consent; Institutional Review Boards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-0755. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Protection of Human Subjects: Informed Consent; Institutional Review Boards

OMB Control Number 0910-0755--Extension

Part 50 (21 CFR part 50) applies to all clinical investigations regulated by FDA under sections 505(i) and 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i) and 360j(g), respectively), as well as clinical investigations that support applications for research or marketing permits for products regulated by FDA, including foods and dietary supplements that bear a nutrient content claim or a health claim, infant formulas, food and color additives, drugs for human use, medical devices for human use, biological products for human use, and electronic products. Compliance with part 50 is intended to protect the rights and safety of subjects involved in investigations filed with FDA under sections 403, 406, 409, 412, 413, 502, 503, 505, 510, 513-516, 518-520, 721, and 801 of the FD&C Act (21 U.S.C. 343, 346, 348, 350a, 350b, 352, 353, 355, 360, 360c-360f, 360h-360j, 379e, and 381, respectively) and sections 351 and 354-360F of the Public Health Service Act.

With few exceptions, no investigator may involve a human being as a subject in FDA-regulated research unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative (see § 50.20). In seeking informed consent, each subject must be provided with certain elements of informed consent. Those elements are listed in § 50.25. Informed consent shall be documented in writing as described in § 50.27.

An institutional review board (IRB) may approve emergency research without requiring the informed consent of all research subjects provided the IRB finds and documents that certain

criteria are met as required in § 50.24. We estimate that about eight times per year an IRB is requested to review emergency research under § 50.24. We estimate, of the 8 yearly requests for IRB review under § 50.24, a particular IRB will take about an hour during each of three separate fully convened IRB meetings to review the request under § 50.24 (one meeting occurring after community consultation). The total annual reporting burden for IRB review of emergency research under § 50.24 is estimated at 24 hours (see table 1).

The information requested in the regulations for exception from the general requirements for informed consent for medical devices (21 CFR 812.47), and the information requested in the regulations for exception from the general requirements of informed consent in § 50.23, paragraphs (a) through (c) and (e), is currently approved under OMB control number 0910-0586. The information requested in the investigational new drug (IND) regulations concerning exception from informed consent for emergency research under § 50.24 is currently approved under OMB control number 0910-0014. In addition, the information requested in the regulations for IND safety reporting requirements for human drug and biological products and safety reporting requirements for bioavailability and bioequivalence studies in humans (21 CFR 320.31(d) and 21 CFR 312.32(c)(1)(ii) and (iv)) is currently approved under OMB control number 0910-0672.

Some clinical investigations involving children, although otherwise not approvable, may present an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children (see § 50.54). Certain clinical investigations involving children may proceed if the IRB finds and documents that the clinical investigation presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children and when the Commissioner of Food and Drugs, after

consultation with a panel of experts in pertinent disciplines and following opportunity for public review and comment, makes a determination that certain conditions are met (see § 50.54(b)).

The information requested for clinical investigations in children of FDA-regulated products is covered by the collections of information in the IND regulations (part 312 (21 CFR part 312)), the investigational device exemption (IDE) regulations (part 812 (21 CFR part 812)), the IRB regulations (§ 56.115 (21 CFR 56.115)), the food additive petition and nutrient content claim petition regulations (21 CFR 101.69 and 101.70), and the infant formula regulations (parts 106 and 107 (21 CFR parts 106 and 107)), all of which are approved by OMB. Specifically, the information collected under the IND regulations is currently approved under OMB control number 0910-0014. The information collected under the IDE regulations is currently approved under OMB control number 0910-0078. The information collected under the IRB regulations is currently approved under OMB control number 0910-0130. The information collected in food additive and nutrient content claim petitions is currently approved under OMB control number 0910-0381 (general requirements) and 0910-0016 (Form FDA 3503). The information collected under the infant formula regulations is currently approved under OMB control number 0910-0256 (general requirements) and 0910-0188 (infant formula recalls).

Part 56 (21 CFR part 56) contains the general standards for the composition, operation, and responsibility of an IRB that reviews clinical investigations regulated by FDA under sections 505(i) and 520(g) of the FD&C Act, as well as clinical investigations that support applications for research or marketing permits for products regulated by FDA, including foods and dietary supplements that bear a nutrient content claim or a health claim, infant formulas, food and color additives, drugs for human use, medical devices for human use, biological products for human

use, and electronic products. Compliance with part 56 is intended to protect the rights and welfare of human subjects involved in such investigations.

The information collected under the IRB regulations "Protection of Human Subjects--Recordkeeping and Reporting Requirements for Institutional Review Boards (part 56)," including the information collection activities in the provisions in § 56.108(a)(1) and (b), is currently approved under OMB control number 0910-0130. The information collected under the regulations for the registration of IRBs in § 56.106 is currently approved under OMB control number 0990-0279. The information collected for IRB review and approval for the IDE regulations (part 812) is currently approved under OMB control number 0910-0078. The information collected for premarket approval of medical devices (part 814 (21 CFR part 814)) is currently approved under OMB control number 0910-0231. The information collected under the regulations for IRB requirements for humanitarian use devices (part 814, subpart H) is currently approved under OMB control number 0910-0332. The information collected under the regulations for IRB review and approval of INDs (part 312) is currently approved under OMB control number 0910-0014.

This collection of information is limited to certain provisions in part 50, subpart B (Informed Consent of Human Subjects), and part 56 (Institutional Review Boards), currently approved under OMB control number 0910-0755.

This proposed extension applies to the following collections of information in part 50: §§ 50.24 (Exception from informed consent requirements for emergency research), 50.25 (Elements of informed consent), and 50.27 (Documentation of informed consent).

In part 56, this proposed extension applies to the following collections of information: § 56.109(d) (written statement about research when documentation of informed consent is

waived); § 56.109(e) (IRB written notification to approve or disapprove research); § 56.109(f) (continuing review of research); § 56.109(g) (IRB written statements to the sponsor about required public disclosures related to emergency research under § 50.24); § 56.113 (Suspension or termination of IRB approval of research); § 56.120(a) (IRB response to lesser administrative actions for noncompliance); and, § 56.123 (Reinstatement of an IRB or an institution).

In § 56.109(d), if an IRB has waived documentation of consent for research that: (1) Presents no more than minimal risk of harm to subjects and (2) involves no procedures for which consent is normally required outside of the research context, the IRB may nevertheless require the investigator to provide a written statement about the research to the subjects. We estimate that each IRB will review about two minimal risk FDA-regulated studies each year. Because the studies are minimal risk, the review can be fairly straightforward, and the written statement for the subjects would be brief. We estimate that IRB review of each written statement could be completed in less than 30 minutes (0.5 hours).

In § 56.109(f), the amount of time an IRB spends on the continuing review of a particular study will vary depending on the nature and complexity of the research, the amount and type of new information presented to the IRB, and whether the investigator is seeking approval of substantive changes to the research protocol or informed consent document. For many studies, continuing review can be fairly straightforward, and the IRB should be able to complete its deliberations and approve the research within a brief period of time.

In § 56.109(g), an IRB is required to provide the sponsor of a study involving an exception from informed consent for emergency research under § 50.24 with a written statement of information that has been publicly disclosed to the communities in which the investigation will be conducted and from which the subjects will be drawn. Public disclosure prior to

initiation of the investigation would include the plans for the investigation and its risks and expected benefits. There must also be public disclosure of sufficient information following completion of the clinical investigation to apprise the community and researchers of the study, including the demographic characteristics of the research population, and its results. (See § 50.24(a)(7)(ii) and (iii)). The purpose of the IRB's written statements is to make the sponsor aware that public disclosure has occurred, so that the sponsor can provide copies of the information that has been disclosed to FDA, as required by §§ 312.54(a) and 812.47(a).

We estimate that about eight requests to review emergency research under § 50.24 are submitted each year, and the IRBs that review those studies would prepare two public disclosure reports: One prior to initiation of the research and one following the study's completion. We estimate that it will take an IRB approximately 1 hour to prepare a written statement to the study sponsor describing each public disclosure, for a total of 2 hours per study. The total annual third party disclosure burden for IRBs to fulfill this requirement related to emergency research under § 50.24 is estimated at 16 hours (see table 2).

When an IRB or institution violates the regulations, FDA issues to the IRB or institution a noncompliance letter (see § 56.120(a)). The IRB or institution must respond to the noncompliance letter describing the corrective actions that will be taken by the IRB or institution. FDA estimates about seven IRBs or institutions will be issued a noncompliance letter annually. We estimate that the IRB's or institution's response will take about 10 hours to prepare, with an estimated total annual burden of 70 hours.

In 2016, FDA disqualified one IRB under § 56.121. To date, no IRB or institution has been reinstated or applied for reinstatement under § 56.123. For this reason, we estimate the

annual reporting burden for one respondent only. We estimate a 5-hour burden per response, with an estimated total annual burden of 5 hours.

The regulatory provisions in parts 50 and 56 currently approved under this collection of information, OMB control number 0910-0755, and for which this extension is requested, are shown in table 1.

In the Federal Register of July 19, 2016 (81 FR 46935), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

Table 1.--Estimated Annual Reporting Burden<sup>1</sup>

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Average Burden per Response	Total Hours
56.109(d) Written statement about minimal risk research when documentation of informed consent is waived	2,520	2	5,040	.5 (30 minutes)	2,520
56.109(e) IRB written notification to approve or disapprove research; 56.109(f) Continuing review; 50.25 Elements of informed consent; and 50.27 Documentation of informed consent	2,520	40	100,800	1	100,800
50.24 Exception from informed consent requirements for emergency research	8	3	24	1	24
56.113 Suspension or termination of IRB approval of research	2,520	1	2,520	.5 (30 minutes)	1,260
56.120(a) IRB response to lesser administrative actions for noncompliance	7	1	7	10	70
56.123 Reinstatement of an IRB or an institution	1	1	1	5	5
Total					104,679

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.



Table 2.--Estimated Annual Third-Party Disclosure Burden<sup>1</sup>

21 CFR Section	No. of Respondents	No. of Disclosures per Respondent	Total Annual Disclosures	Average Burden per Disclosure	Total Hours
56.109(g) IRB written statement about public disclosures to sponsor of emergency research under 50.24	8	2	16	1	16

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

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